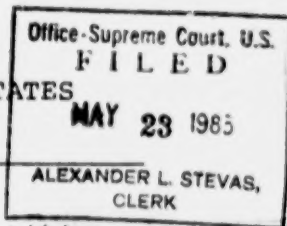


IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982



LEONARD ELLISON,

Petitioner,

vs.

KANE COUNTY SHERIFF'S OFFICE MERIT COMMISSION
GENEVA, ILLINOIS, and GEORGE B. KRAMER
SHERIFF OF KANE COUNTY, ILLINOIS,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
SECOND DISTRICT

DAVID R. AKEMANN
Counsel of Record
and
LINDA SOREFF SIEGEL
719 Batavia Avenue
Geneva, Illinois, 60134
(312) 232-2400, Ext. 560

Attorneys for Respondent
Kane County Sheriff's Office
Merit Commission,
Geneva, Illinois

ROBERT J. MORROW
STATE'S ATTORNEY
OF KANE COUNTY

DAVID R. AKEMANN
CHIEF: CIVIL DIVISION

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STATEMENT OF THE CASE

At all relevant times, the Petitioner was a Deputy Sheriff of Kane County, Illinois, subject to discipline of the Respondents by virtue of the laws of the State of Illinois and The County of Kane, a political subdivision thereof.

On June 23, 1980, the Petitioner was admitted into a mental hospital located in Aurora, Illinois. At the same time, there was in effect an Illinois statute, ILL. REV. STAT., Ch. 38, Sec. 24-3.1(a) (5), entitled, "Unlawful Possession of Firearms and Firearms Ammunition," which provided as follows:

"A person commits the offense of unlawful possession of firearms or firearms ammunition when he has been a patient in a mental hospital within the past five years and has any firearms or firearms ammunition in his possession."

(hereinafter referred to as the Unlawful Possession Statute).

On or about July 16, 1980, Petitioner executed a sworn application to renew a Fire-

arms Owners' Identification Card. The application contained the following question, "Have you been a patient in a mental hospital within the past 5 years?" The Petitioner answered that question in the negative.

On Febraury 11, 1981, Respondent Sheriff filed a Complaint with the Respondent Merit Commission seeking disciplinary action against the Petitioner. The basis of the Complaint was that Petitioner, by virtue of the unlawful possession statute, could not lawfully carry a firearm and that possession of a firearm was necessary to perform the duties of Deputy Sheriff (hereinafter referred to as Complaint No. 1).

On February 25, 1981, Petitioner filed a Complaint for Declaratory Judgment in the circuit court alleging that the unlawful possession statute was unconstitutional on its face and as applied to Petitioner because it violated the due process and equal protection clauses of the Fifth and Fourteenth Amendemnts of the United States Constitution.

On February 25, 1981, petitioner and both Respondents agreed to postpone the hearing on the merits of Respondent Sheriff's Complaint before the Respondent Merit Commission, until the adjudication of Petitioner's Complaint in the circuit court.

On April 2, 1981, at a pre-hearing conference in the circuit court, all parties agreed that the case would be limited to a facial challenge to the unlawful possession statute and that it would not include a challenge to said statute in its application to Petitioner.

On August 21, 1981, Respondent Sheriff filed another Complaint against Petitioner with Respondent Merit Commission seeking disciplinary action. The basis of this Complaint was that on or about July 16, 1980, Petitioner lied on an application to renew his Firearms Owners' Identification Card which had been previously issued to him by the State of Illinois (hereinafter referred to as Complaint No. 2).

On October 14, 1981, the circuit court entered judgment in favor of the Respondents and against Petitioner in the declaratory judgment action upholding the constitutionality of the unlawful possession statute.

On November 12, 1981, Respondent Merit Commission held consolidated hearings on both Complaints 1 and 2.

On December 9, 1981, Respondent Merit Commission found Petitioner guilty on both Complaints and ordered that Petitioner be discharged.

On January 12, 1982, Petitioner filed a Complaint for Administrative Review of Respondent Merit Commission's decision which is still pending in the state circuit court.

On September 14, 1982, the Appellate Court of Illinois, Second District, on a 2-1 decision, reversed the circuit court. The Appellate court did not reach the merits of Petitioner's constitutional claims, but instead remanded the case to the trial court with instructions to dismiss for failure to exhaust

his administrative remedies. Apparently, the Appellate Court was not aware that by the date of its Opinion, Petitioner had already exhausted his administrative remedies.

On November 30, 1982, the Supreme Court of Illinois denied leave to appeal the Appellate Court's decision and on March 1, 1983, Petitioner filed a petition for a Writ of Certiorari with this Court.

SUMMARY OF ARGUMENT

A Writ of Certiorari should not be granted because no state appellate court has ever decided the merits of the issue Petitioner seeks to raise in this Court. Also, Petitioner still has a state forum to raise his constitutional claims.

In addition, a decision of the issue sought to be raised in this court will not dispose of the controversy between the parties. Petitioner was found guilty on two separate and separately supported Complaints. Only one of these Complaints involves a federal constitutional question.

I.

PETITIONER DOES NOT PRESENT
ANY CONSIDERATIONS SET FORTH
IN RULE 17 (b)

A.

A State Court Of Last Resort Has Not
Decided A Federal Question In This Case.

In the instant case, the state appellate court remanded the case to the circuit court with instructions to dismiss without rendering a decision on Petitioner's federal issues. This remand was founded upon state, not federal legal principles. However, a state forum remains that will allow petitioner to raise the federal questions in the proper forum.

Petitioner has raised the identical federal questions in his hearing before the Respondent Merit Commission. Petitioner has filed a Complaint for administrative review of that decision. If that Complaint is prosecuted, a state court of last resort will then have a proper forum to decide the federal questions, petitioner seeks to raise here.

The Application Of State Law May Obviate
The Need To Reach The Federal Constitutional
Question Involved Here.

Petitioner now seeks to have this court
decide federal constitutional issues based on
a facial challenge to an Illinois criminal
statute. However, in Rawlings v. Department
of Law Enforcement, 73 Ill. App. 3d 267(1979),
the state appellate court indicates, at least
in dicta, that a proper hearing procedure
under the Firearms and Ammunition Act, ILL.
REV. STAT., Ch. 38, Sec. 83-1 et seq. et. seq.
may remove an individual from the effect of
the criminal unlawful possession statute.
Rawlings at 276.

Petitioner, therefore, may have other
administrative remedies to pursue that do not
involve any of the Respondents.

Petitioner Lacks Federal Authority
To Support His Petition.

Petitioner cites the case of Walker v. State Board of Elections, 65 Ill. 2d 543(1976) in support of his petition. However, Walker was an election case decided on state law. The same argument was rejected by the majority in the state appellate court below. (Petition, Appendix B) Petitioner does not cite a single federal case or statute which necessitates this court ignoring the reasonable Illinois procedural rule on exhaustion of administrative remedies.

II.

A DECISION ON THE MERITS WILL NOT TERMINATE THE CONTROVERSY BETWEEN THE PARTIES

Petitioner was found guilty on two separate Complaints. Only one of the Complaints relates to the federal questions presented in the petition. At best, Petitioner may receive a declaration of facial invalidity of the unlawful possession statute. Such a decision, if indeed, would not effect the second Complaint on which petitioner was also found guilty.

Accordingly, Petitioner's federal constitutional claims are not appropriate to be settled by this court in this posture within the meaning and spirit of Rule 17(c) of this court.

CONCLUSION

For the preceding reasons this petition should not be granted.

Respectfully submitted

David R. Akemann

DAVID R. AKEMANN
719 Batavia Ave.
Geneva, Illinois 60134
(312)232-2400, Ext 560

Attorney for Respondent
Kane County Sheriff's Office
Merit Commission,
Geneva, Illinois.